Supreme Court, U. S.
NOV 1 0 1974

APPENDIX

# In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1452

STATE OF OREGON,

Petitioner,

v.

WILLIAM ROBERT HASS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

PETITION FOR A WRIT OF CERTIORARI FILED MARCH 29, 1974
CERTIORARI GRANTED OCTOBER 15, 1974

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## INDEX


| | Page |
|---|---|
| Chronological List of Relevant Docket Entries | 1 |
| Indictment | 2 |
| Transcript of Trial (excerpts) | 3 |
| Opinion of Oregon Court of Appeals | 83 |
| Opinion of Oregon Supreme Court | 84 |
| Judgment of Oregon Supreme Court | 85 |

## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Sept. 6, 1972—Indictment returned into Circuit Court for Klamath County, Oregon, accusing Hass of burglary in the first degree.

Sept. 13, 1972—Hass arraigned on indictment and entered plea of not guilty.

Oct. 6, 1972—Hass's trial by jury began.

Oct. 9, 1972—Verdict of guilty returned.

Oct. 16, 1972—Judgment order entered, sentencing Hass to pay $250 fine and placing him on probation for two years.

Oct. 26, 1972—Hass's notice of appeal filed.

May 21, 1973—Opinion of Oregon Court of Appeals entered, reversing circuit court.

May 25, 1973—State's petition for rehearing filed.

May 30, 1973—Petition for rehearing denied.

June 20, 1973—State's petition for review filed in Oregon Supreme Court.

Sept. 5, 1973—Petition for review allowed.

Dec. 31, 1973—Opinion of Oregon Supreme Court entered, affirming Court of Appeals.

Mar. 29, 1974—State's petition for certiorari filed.

Oct. 15, 1974—Certiorari granted.

## INDICTMENT

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF KLAMATH

| | | |
|---|---|---|
| THE STATE OF OREGON | ) | |
| | ) | INDICTMENT |
| v. | ) | |
| | ) | 72-124 C |
| WILLIAM ROBERT HAAS [*sic*] | ) | |

William Robert Haas [*sic*] is accused by the Grand Jury of the County of Klamath by this indictment of the crime of burglary in the first degree committed as follows:

The said William Robert Haas [*sic*] on or about the 4 [*sic*] day of August A.D. 1972 in the said County of Klamath and State of Oregon, then and there being, did knowingly, unlawfully and feloniously enter a building, to-wit: a dwelling located at 1328 Carlson Drive, Klamath Falls, Oregon, with the intent to commit a crime therein, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Oregon. (O.R.S. 164.225).

Dated at Klamath Falls in the County aforesaid, this 6 [*sic*] day of September A.D. 1972.

[Signatures, indorsements, and names of witnesses examined before Grand Jury omitted in printing.]



## TRANSCRIPT OF TRIAL
**(excerpts)**

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF KLAMATH

| | | |
|---|---|---|
| THE STATE OF OREGON, Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 72-124-C |
| | ) | |
| WILLIAM ROBERT HASS, Defendant. | ) | |

[October 6, 1972]

* * * * *

**[ 45 ]**

BJORN OSTERHOLME

was thereupon produced as a Witness in behalf of the State of Oregon, and having been first duly sworn on oath, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. CRANE:

Q. Would you state your name and address?

A. Bjorn Osterholme, 6536 Climax Avenue, Klamath Falls, Oregon.

Q. Where are you employed?

A. By the State Police.

Q. How long have you been so employed?

A. Approximately two and a half years.

MR. McKEEN: Your Honor, might I ask a question in aid of objection?

THE COURT: Yes.

MR. McKEEN: Q. Officer, in your hand you have a paper notebook, a book, some papers, is that correct?

A. Yes, correct.

Q. And is that your notebook that contains the original notes of this case?

A. Yes.

Q. And in those papers is the report that you made for this case?

A. Yes.

Q. And have you read those in preparation for your testimony

[ 46 ]

today?

A. Yes.

Q. And your testimony today is going to be partly based upon those notes?

A. Yes.

MR. McKEEN: I would ask that they be produced under the rules of the Foster case [*i.e.*, *State v. Foster*, 242 Or. 101, 407 P.2d 901 (1965).].

MR. CRANE: That rule applies at the time of cross examination.

THE COURT: Council [*sic*] will be allowed to see them.



MR. CRANE: I have no objection to that.

THE COURT: The request at this point is denied.

MR. CRANE: Q. Officer Osterholme, referring you to August 3, 1972, were you given a license number—

MR. McKEEN: I would object to this Witness using those notes, no foundation has been laid for the use of past memory recorded or refreshing his recollection.

MR. CRANE: I can lay that foundation.

THE COURT: Proceed.

MR. CRANE: Q. Officer, do you have a complete memory of all of the events that occurred that evening?

A. No, sir.

Q. Referring to your notebook, did you make those notes at the time the events occurred?

MR. McKEEN: I would with draw [*sic*] my objection.

[ 47 ]

MR. CRANE: Q. Did you make those at the time the events occurred or close to the time that the events occurred?

A. Yes.

Q. Alright, would those notes aid you in giving us your accurate description of the events as they occurred that evening?

A. Yes, they would.

MR. McKEEN: Might I ask a question in aid of an objection, Your Honor?

THE COURT: Yes.

MR. McKEEN: Q. Officer, you testified that you have gone over these and read them for the purpose of your testimony today, is that true?

A. Yes.

Q. And how many pages does it consist of in this case in your notebook?

A. I don't know for sure.

Q. How many reports do you have?

A. I have two reports.

Q. Are you saying that after you studied the reports you can't testify substantially accurate as to what happened without looking at them on the Witness stand, that your memory is not such after you have studied your notes so that you can testify without looking at them?

A. I didn't study my notes, I just briefly glanced over them

[ 48 ]

to refresh my memory.

Q. Other than the license plate number and that type of thing, wouldn't you be able to give us your testimony without the use of your notes?

A. I think my notes would help in my testimony.

Q. Then, your [*sic*] saying that your memory is such that even after reading your notes that you couldn't testify as to what happen [*sic*] in this case without having them in front of you?

A. No, sir.



MR. McKEEN: I would object to the using of the notes.

MR. CRANE: Mr. McKeen has already granted permission by looking at the notes and looking at the report that was made by Officer Osterholme. Obviously the idea is to get him to testify without refreshing his memory and then trying to trip him up from his other notes. I think that he ought to be able to use his notes.

MR. McKEEN: I believe that comment of Council [*sic*] is unfair and I would ask that it be stricken.

THE COURT: That portion of the statement about "tripping up" is stricken and the Jury is instructed to disregard it. The Court holds that the foundation has been laid for Officer Osterholme to use his notes and at this point Council [*sic*] is permitted to view them if he wishes.

MR. McKEEN: I do, Your Honor.

THE COURT: Very well.

[ 49 ]

(Whereupon the notes were handed to Council [*sic*] for his inspection)

MR. CRANE: Q. Officer, without going into the license number and so on, did you receive a license number that you were to trace?

A. Yes.

Q. And did you through various steps trace that too [*sic*] William Hass?

A. Yes.

Q. Okay, did you go to Mr. Hass's residence?

A. Yes, I did.

Q. And where was that?

A. I'll have to refresh my memory from my notes here, 4500 Green Springs Drive, Klamath Falls, Oregon.

Q. Did you observe a Volkswagen bus there?

A. Yes, I did.

Q. Could you describe the bus generally for us?

A. Yes, this particular Volkswagen was rather unique, light blue Volkswagen delivery—

Q. Could you speak up?

A. Yes, this Volkswagen bus is rather unique, it looked like a Volkswagen pickup, the top of it was cut off with a cutting torch, the top of the cab portion.

Q. Did you contact Mr. Haas at that residence?

A. Yes, I did.

**[ 50 ]**

MR. CRANE: Your Honor, at this time I think we should have a hearing out of the presence of the Jury.

MR. McKEEN: I would agree, Your Honor.

THE COURT: Very well. The Jury may retire to the Jury room.

(Out of the presence of the Jury)

MR. McKEEN: I have some instructions, Your Honor.

THE COURT: Very well.

MR. McKEEN: I would serve them on the Court and on Council [*sic*].



MR. CRANE: I have some also, Your Honor.

THE COURT: Thank you.

MR. CRANE: Q. Officer Osterholme, when you contacted the Defendant did you advise him of his rights?

A. Yes, I did.

Q. And did you ask him any questions prior to that?

A. The first thing I did was I advised him of his rights.

Q. Did you use a form in doing that?

A. Yes, this is our Oregon State Police form 45, advice of rights.

Q. Do you have that form that you used when you talked to the Defendant?

A. Yes.

Q. Alright, would you describe the procedure that you used in advising him of his rights?

A. I read the front of form 45 and instructed Mr. Hass to

**[ 51 ]**

answer the questions if he understood and no if he did not.

Q. Would you then use the form, would you tell us what you told him and then what he responded?

A. Yes, I said "it's my duty as a police officer to inform you of your rights, you have the right to remain silent, do you understand this," and Mr. Hass replied "yes."

Q. What did you do to the form when he indicated that?

A. I wrote down his answer.

Q. Go ahead?

A. "Anything you say can be used against you in a court of law, do you understand that" and Mr. Hass answered "yes." "You have the right to talk to a lawyer and have him present while your [*sic*] being questioned, do you understand that," and Mr. Hass answered "yes." "If you do give a statement you can stop talking at anytime you wish, do you understand that," and Mr. Hass answered "yes." "Having these rights in mind do you wish to talk to me now," and Mr. Hass answered "yes."

Q. Did you tell Mr. Hass why you were there?

A. After I informed him of his rights, yes.

Q. What did you tell him?

A. I told him that I was investigating the theft of a bicycle.

Q. And what did he say?

A. Oh, we had a brief conversation there in which there was some confusion as to what bicycle I was talking about and

[ 52 ]

then I asked him if he had stolen more than one and we had a conversation back and forth about this at which point he admitted that he had taken two that day and didn't know which one I was talking about.



Q. Okay, can you read his exact words, did he say that he had taken them?

A. Yes, he did, he preliminarily indicated he was the one who had taken them.

Q. Did he indicate anyone else had been with him?

A. Yes, during that conversation he also admitted having another person with him.

Q. Did he tell you who that was?

A. Not at that time, he stated the other person was in the house.

Q. Now, you say that he said he had taken two bicycles?

A. Yes.

Q. Did he tell you where they had been taken from?

A. He didn't know the exact addresses.

Q. Did he say anything else during this conversation that you recall?

A. Yes, I asked him why he had taken the bicycles and he said that he needed money and I asked him if he was working and his reply was "no," that he had quit his job because it was too hard on him and that he was now broke and needed money to eat and that's why he had taken the

[ 53 ]

bicycles.

Q. Anything else that he said that you can recall before you went into the house?

A. He informed me that he had given one of the

bicycles back and that the other one was at a place where it had been left by Mr. Hass and the other individual in the house.

Q. Did he tell you where that was?

A. Not at that time, no.

Q. Anything else that you can recall?

A. No, sir.

Q. Then you went in the house?

A. Yes.

Q. And did he point out someone in the house?

A. I don't remember if he pointed him out or not, I remember pointing toward one individual and asking him if that was the one that was with him and he said "yes," and the person I was pointing too [*sic*] was Patrick Michael Lee.

Q. While you were in the house did Mr. Hass tell you anything else about the incident?

A. No, sir.

Q. Okay, did you leave the residence then with Mr. Hass and Mr. Lee?

A. Yes.

Q. And where did you go?

A. I went to Washburn Way near Joe Wright Road, the intersect-

[ 54 ]

ion of Joe Wright Road and then—near Route 1 Box 136 Washburn Way and Mr. Hass



pointed out a place in the brush where the bicycle was and we did recover the bicycle.

Q. Did you pick up the bicycle and take it with you?

A. No.

Q. Did Mr. Hass say anything during—in the car about what—about the incident involved?

A. At one point he said that he was in a lot of trouble and he would like to phone his attorney at which time I told him he could phone his attorney as soon as we got to the office, that we would provide a phone for him.

MR. CRANE: That's all I have.

CROSS EXAMINATION

MY MR. McKEEN:

Q. Officer, had this boy shown you the bicycle yet when he told you that he was in a lot of trouble and would like to call his attorney?

A. No, he hadn't—

THE COURT: Excuse me, the issue before the Court in the absence of the Jury is going to be the admissibility of the alledged [*sic*] statements, is that what your cross examination is about?

MR. McKEEN: Mr. Crane brought up evidence of another crime that involves illegal search and I had no reason to file any preliminary motions involving that bicycle

[ 55 ]

because it was not connected with this crime but I think the evidence will disclose that

that bicycle was picked up after this Defendant told the police officer that he wanted to contact an attorney and after he was advised that he couldn't do so until he got back to the station and that he then gave a statement that caused this officer to find that bicycle and I believe that I have a right to raise that question and I have objected to this other testimony as fruits of an unlawful search.

THE COURT: Very well. Proceed.

MR. McKEEN: Q. Had he shown you where the bicycle was when he told you that he wanted to talk to an attorney?

A. No, sir.

Q. And after he told you that he wanted to talk to an attorney you still caused him to show you where the bicycle was, correct?

A. No, sir.

Q. Okay, what happened?

A. Mr. Hass volunteered to go ahead and show me where the bicycle was.

Q. He told you that he wanted to talk to his attorney and you told him that he could do that when you got back to the station and then you went ahead and he showed you where the bicycle was, correct?

A. No, sir.

[ 56 ]

Q. What did I say that is wrong?



A. I explained to him that a phone would be provided when we got to the station.

Q. When you got to the station?

A. Yes.

Q. So, you continued with him—isn't it true that after you told him this that you got on the wrong road and that you had to turn around on a different road, did that happen?

A. I don't remember, we did take a wrong road somewhere.

Q. Could you have found the bicycle without the Defendant taking you to it?

A. No, sir.

Q. After he told you that he wanted to talk to an attorney, at that time was he under arrest?

A. He had been told that he was under arrest.

Q. Was he under arrest?

A. Yes, sir.

Q. Would you read that part where you advised him about his right to an attorney?

A. Yes, "you have a right to remain silent, do you understand this," and his answer was "yes." "That anything you say can be used against you in a court of law, do you understand that," and Mr. Hass answered "yes." "You have a right to talk to your lawyer and have him present with you while your [*sic*] being questioned, do you understand that,"

[ 57 ]

and he said "yes." "If you

cannot afford to hire a lawyer one will be appointed to represent you before any questiong if you wish one, do you understand that," and he answered "yes." "If you do give a statement you can stop talking at anytime you wish, do you understand that," and his answer was "yes." "Having these rights in mind, do you wish to talk to us now."

Q. Then after you advised him of all of this you had him out in the woods in a car and he told you that he was in serious trouble and he wanted to talk to his attorney, correct?

A. Not in those words, not in those circumstances.

Q. How did you get into the house, did you just say "may I please come in your house," and did he just say "okay," so you just walked in or did you kick the door in?

A. No, Mr. Hass was ahead of me and I told him to wait a minute and he stopped and I said "if your [*sic*] going in the house I'll either have to be invited in or stay out here."

Q. Then what happened?

A. He looked at me and then he turned around and he walked in at which time I went in right behind him.

Q. Did he close the door and you kick it open?

A. No, sir.

Q. When you first got in the house did you look at the other fellow in there and say "hey creature feature get your ass out here"?



[ 58 ]

A. No, sir.

Q. You didn't do that, did you?

A. No, sir.

Q. What did that boy look like this Patrick Lee, did he have hair half way down to the ground?

A. No, sir.

Q. How long was his hair?

A. I don't remember.

Q. You don't remember?

A. No, sir.

Q. Was he dirty?

A. Yes, I believe he was.

Q. Caucasian?

A. Yes.

Q. The person that you remember seeing this Patrick was caucasian, he was a dirty person but you don't remember if he had long hair?

A. It depends on what you mean by that, it wasn't half way down to the ground, no.

Q. How long was his hair?

A. Oh, approximately neck length I believe.

Q. Now, getting back to the statement that you got from Mr. Hass, you confronted him with the theft of a bicycle, is that correct?

A. That's correct.

[ 59 ]

Q. And you don't have any question in your mind as to that?

A. Yes.

Q. And he advised you that this theft that he had done himself, is that correct?

A. Yes.

Q. So, you don't have anything from your investigation—do you have any reason to believe that he didn't go to the garage and get them himself?

A. Yes.

Q. What is that?

A. I have—I had a description by a previous witness Robert Lehman of the person who took the bicycle from the garage.

Q. And this boy said that he was the one who had stolen the bike?

A. Yes.

Q. He was talking about the theft?

A. Yes.

Q. Did he tell you that he had gone to the garage and taken them?

A. No, sir.

Q. He didn't know the exact residence?

A. He couldn't—he didn't know the house number but he could take me to where they were stolen.

Q. To the area?



A. No, he could take me to the house where they were stolen

[ 60 ]

from.

Q. You didn't state that before, did you just forget or did you want to change—

A. What I said was that he didn't know the exact address.

Q. Now, your [*sic*] saying that he did know the exact residence but that he just didn't know the number?

A. That's correct.

THE COURT: Your cross examination bears on the admissibility of this statement or is it cross examination on the merits?

MR. McKEEN: I think it's probably outside of this hearing and I will confine my questioning to what is relevant.

THE COURT: Proceed.

MR. McKEEN: Q. You took a statement from two people, one of them was William Hass and the other one was Patrick Lee?

A. Yes.

Q. Do you have any place in your notes where you have put in the statement that he needed money and had taken the bicycle?

A. No, sir.

Q. Did you write that down any place during the coarse [*sic*] of—

MR. CRANE: This goes again to the statement itself.

MR. McKEEN: This is a case where the District Attorney has given me copies of everything that was in writing and assured me that those were the only statements—

[ 61 ]

MR. CRANE: Sam, I didn't say that and you know it. I spoke to you and told you yesterday that this was all that was in writing.

MR. McKEEN: I will amend that, he gave me the writing and told me that—those were the only statements that were in writing and produced to me the statements that he had made in writing.

THE COURT: The thing that the Court is confronted with here is whether or not any of this is admissible, the two elements of voluntariness and adequacy of waiver. If your examination relates to those two features or your contingent [*sic*] that there was an unlawful search then the Court will allow it but if it isn't on any one of those three issues then it needs to be done while the Jury is present.

MR. McKEEN: That's all the questions I have.

MR. CRANE: Q. Officer, during the coarse [*sic*] of your questioning of this Defendant, did you at anytime [*sic*] threaten him with any physical violence?

A. No, sir.

Q. Did you at anytime administer any physical violence to him?

A. No, sir.



Q. Did you tell him that things would go easier on him either in court or in other ways if he would tell you what

[ 62 ]

happened?

A. No, sir.

MR. CRANE: That's all I have.

MR. McKEEN: Nothing further.

THE COURT: Any further?

MR. McKEEN: To save time I would agree that up to the point of Mr. Hass telling him that he wanted an attorney and that he was in a lot of trouble, that statement would be admissible but after that point I believe that all of the evidence incriminating this Defendant was illegally obtained and completely inadmissible.

THE COURT: Are there further Witnesses or additional evidence on the admissibility of the alleged statements?

MR. CRANE: No, Your Honor.

THE COURT: Does the Defendant intend to offer testimony or evidence on any of these three issues, the issue of voluntariness, adequacy of waiver and anything in support of the contingent [*sic*] that there was an unlawful seizure and so forth?

MR. McKEEN: Yes, I would like to call—

THE COURT: Before you present that evidence, I would like to ask Officer Osterholme to state when it was that the Defendant first mentioned something about a lawyer?

OFFICER OSTERHOLME: It was approximately—I would say a mile away from Washburn Way, possibly in that area when

**[ 63 ]**

he made the statement, he said "gee, I know I'm in a lot of trouble," and then later he said "do you think I could phone later," or something like that to which I replied "Yes, that we would make a phone available to him as soon as we got to the station."

THE COURT: Anything further?

OFFICER OSTERHOLME: Then he asked me "do I have to show you where this bike is," and I said "no, we're not going to force you too [*sic*], however, we would like to get this cleared up tonight," at which time he thought for a minute and then did go where the bike was.

THE COURT: As I understand it you were on your way to where the bicycle was when this item first came up when he said "gee, I'm in a lot of trouble," and then later on something was said about a lawyer?

OFFICER OSTERHOLME: Yes.

THE COURT: Did I understand it that this is where he was directing you too [*sic*] at that time?

OFFICER OSTERHOLME: Yes.

THE COURT: And that was the first time that he said "gee, I'm in a lot of trouble"?

OFFICER OSTERHOLME: Or words to that effect, yes.

THE COURT: And then some period of time elapsed before he mentioned the lawyer?



OFFICER OSTERHOLME: Yes, as I remember it was close to a

**[ 64 ]**

few seconds, he just seemed to be thinking there.

THE COURT: Where were you at that time?

OFFICER OSTERHOLME: I was in the front seat of the patrol car and I don't remember exactly whether the Defendant was—I believe he was in the right front seat.

THE COURT: Where in the County were you in the car?

OFFICER OSTERHOLME: Approximately—within a mile or so of Washburn Way.

THE COURT: Had you gone beyond your patrol office?

OFFICER OSTERHOLME: No, sir.

THE COURT: And what was it specifically that the Defendant said about a lawyer?

OFFICER OSTERHOLME: He said "do you think that I could phone my lawyer," or words to that effect.

THE COURT: Just relate the conversation between the two of youfrom [*sic*] and after that point, please?

OFFICER OSTERHOLME: I told him that we would make a phone available too [*sic*] him at the patrol office if he desired to do so and then a short time after that he asked me if he had to show me where the bike was and I told him that I wasn't going to force him too, [*sic*], however, we did want to get this case cleared up

that night and since we were out in this vicinity that if he would show us, which he agreed to do.

THE COURT: Then what happened?

OFFICER OSTERHOLME: And then we did proceed and we

[ 65 ]

retrieved the bike from the weeds on Washburn Way.

THE COURT: Further examination by either Council [*sic*]?

MR. McKEEN: No, Your Honor.

MR. CRANE: Q. Was Mr. Lee also in the patrol car?

A. Yes.

Q. Did he participate at all in the finding of the bicycle or taking you to the bicycle?

A. He agreed to help find the bicycle, yes, but he was new in the area and didn't know any of the roads.

Q. Did he have any active part in directing you down any of the roads or anything of that nature?

A. He did get out of the car at one point, we did stop to search for the bicycle and it was twenty five yards from where the bicycle actually was, there were heavy weeds and he did attempt to search for it there, however, Mr. Hass was the one who gave us the better direction to spot where the bicycle was.

MR. CRANE: That's all I have.



THE COURT: You may step down, Officer Osterholme for a few minutes. Anything further.

MR. McKEEN: For the limited purpose of the search or the evidence following the advice as to the attorney I would call William Hass.

[ 66 ]

ROBERT [*sic*] HASS

was thereupon produced as a Witness in behalf of the Defense, and having been first duly sworn on oath, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. McKEEN:

Q. Would you state your name and address, please?

A. William Robert Hass, 4500 Green Springs Drive.

Q. I'm going to refer you now to the point where you were in the patrol car when you were going to direct the police to the bicycle that you had thrown in the bushes?

A. Yes.

Q. Are you with me?

A. Yes.

Q. Okay, what were the sequence of events that happened regarding your request for an attorney in your own words and how did this come about?

A. Well, I just figured out that I was in a lot of trouble and I said that I wanted to see a lawyer and he said "well, I can't let you do that," and so then he says

"I'll let you when we get to the station" and then we went down—I don't know exactly the road but we went down this road and fished out the bike.

Q. Did you get on the wrong road when you were trying to do that?

[ 67 ]

A. The first time, yes.

Q. Did you use your directions after you got on the wrong road as to where the right road was?

A. Yes.

Q. Was that after you told him that you wanted to talk to your lawyer, that you were in a lot of trouble?

A. Yes, before I turned over the bike.

MR. McKEEN: That's all I have.

MR. CRANE: I have no questions.

THE COURT: You may step down, Mr. Hass. Further testimony on these issues?

MR. McKEEN: No, Your Honor.

MR. CRANE: No, Your Honor.

THE COURT: As I understand it, that portion of the alleged statement of the Defendant up to the point when he mentioned to the Officer that he would like to talk to his lawyer, there is no contest about that?

MR. McKEEN: Correct.

THE COURT: And from and after that point, what is it that the State is intending to introduce?

MR. CRANE: Well,—



THE COURT: Are you intending to offer any of the Defendant's statements to the Officer in the patrol car or thereafter that point?

MR. CRANE: Your Honor, we would introduce evidence that

[ 68 ]

this man, the Defendant was the one who took the Officer—Officer Osterholme and showed him the houses where the bikes were taken from, he took them back and showed them the Carlson Drive address and also the Sage Way address, Cherry Way address.

THE COURT: Is this prior to their going to the—after they had gone to the station?

MR. CRANE: No, it's my understanding that this was after they had picked up the bicycle that they then went back up to Moyina Heights and went to the Lehman house and then went over to the Cherry Way address prior to going to the jail where the Defendant was booked.

THE COURT: Defense motion?

MR. McKEEN: First of all, Your Honor, I would like to remind the Court that the first Witness here that was brought before this Jury, over objection, it was represented that they could tie this into the Defendant as part of a scheme, pattern and design and certainly that representation would have to be met by competent and admissible evidence and the Court let this evidence in before the Jury only on that representation. Now, it

develops that the Defendant as to all of that incriminating matter had requested an attorney and had been refused one and so the Jury has it completely implanted in their mind the fact that the Defendant is involved in two burglaries—two

[ 69 ]

garages, not only two burglaries. Mr. Crane represented in front of the Jury that the Defendant—that it involved this Defendant and I would ask that not only that be stricken as part of the State's case but that the Court grant a judgment of acquittal, that there has been improper evidence and that the Defendant is already under jeopardy and that it was done intentionally and in the alturnative [*sic*] I would ask for a mistrial. That under no circumstances should evidence come before this Jury that the Defendant caused himself to be incriminated after he asked for an attorney and was refused. Any attorney would have told the Defendant not to go to this bicycle or not to go to any house. I think this was a gross violation of the Defendant's rights.

THE COURT: As I understand it you feel the fact of the recovery of the bicycle out there on that occasion is not admissible?

MR. McKEEN: Yes, if the State—the State has already used that so much that I'm going to have to use that myself to put in my defense, there is no other way that I can get that away from the Jury.

THE COURT: Why is it that you say that it is inadmissible?



MR. McKEEN: This was stemming from a conversation and a search after the Defendant was denied Council [*sic*], rather than a physical object it was testimony stemming from an illegal

[ 70 ]

search, the testimony of the Defendant pointing out a house and certainly this is incriminating and he done this after he was denied Council [*sic*].

THE COURT: The Court sustains the objection to any of the admissions or statements of the Defendant from and after the time when he first stated that he wanted to see an attorney and the Court sustains the objection to the identification by the Defendant of the locations [*sic*] where the bicycle was taken unless the fact situation is other than you have indicated. Now, the fact that the bicycle was recovered and where it was recovered may be revealed to the Jury but not the Defendant's participation in it. We'll take a ten minute recess.

(Whereupon a ten minute recess was taken)

(In the presence of the Jury)

THE COURT: Proceed.

MR. CRANE: Q. Officer, when you contacted the Defendant, did you advise him of his rights?

A. Yes, I did.

Q. Did you use a form when you did that?

A. Yes.

Q. What is that form?

A. Form 45, the standard police—State Police Advice of Rights form.

Q. Do you have that form that you used when you talked to the

[ 71 ]

Defendant?

A. Yes, I do.

Q. Would you tell the Jury what you told the Defendant and then his responses to your questions?

A. Yes, I advised Mr. Hass to answer the question yes if he understood and no if he didn't understand and I informed him that it was my duty as a police officer to inform him of his rights. "You have the right to remain silent, do you understand this," and he answered "yes." "That anything you say can be used against you in a court of law, do you understand that," and Mr. Hass answered "yes." "You have the right to talk to a lawyer and have him present with you while your [*sic*] being questioned, do you understand that," and Mr. Hass answered "yes." "If you cannot afford to hire a lawyer one will be appointed to represent you before any questioning if you wish one, do you understand that," and Mr. Hass answered "yes." "If you give a statement you can stop talking at any time you wish, do you understand that," and Mr. Hass answered "yes." "Having these rights in mind, do you wish to talk to me now," and Mr. Hass answered "yes."

Q. What did you tell him that you were doing there?



A. I told him that I was there investigating the theft of a bicycle.

Q. Would you tell us the exact words as you remember them,

[ 72 ]

remember the conversation that you had with Mr. Hass at that time?

A. I don't remember the exact words but Mr. Hass stated in substance upon response to some questions that I had asked that he hod stolen a bicycle that day and I was there investigating it and then through my questions and my investigation he was talking about two bicycles, he stated that he had given one back and I asked him if he had returned the one where the man had to follow him and take it and he said that's the one that he had given back—

MR. McKEEN: Excuse me, I'm going to object, we've had a hearing out of the presence of the Jury as to what statements were made in the presence of the Defendant and now this Witness is testifying to things that he didn't say before and I am now claiming that this is prejudicial at this point and I think that the Witness should be advised that the only testimony as to the statements are those which was given outside of the presence of the Jury and subject to the Court's rule.

THE COURT: If these statements were at residence then the objection is over ruled [*sic*].

MR. CRANE: Q. Go ahead?

A. I then asked Mr. Hass why he had stolen the

bicycle and he told me that he was out of work and I asked him if he had been working and he stated that he had, had been

[ 73 ]

working at Weyhaeuser [*sic*] but he quit because the work was too hard on him. I then asked him why he had stolen the bicycle and he said because he needed money to eat and that was basically the extent of the conversation there.

Q. Did you ask him anything about the other people involved?

A. Yes, I asked him where the individual was that had ridden the bike out of Mr. Lehman's garage and he replied that he was in the house and so we went in and contacted a Mr. Patrick Michael Lee.

Q. Did you ask Mr. Hass about a third party?

A. Yes, I did.

Q. And what did he respond to that?

A. I asked Mr. Hass and Mr. Lee if there was another fellow with them that had taken any of the bicycles involved in this and they reported to me that he was a hitch hiker [*sic*] but that he had not participated in this.

Q. Did you subsequently recover another bicycle?

A. Yes, I did.

Q. Where did you recover that?

A. That bicycle was recovered from Washburn Way.

Q. And did you take that bicycle to Mr. White?

A. Yes, I did.



Q. And did he identify that as his son's bicycle?

A. Yes, he did.

MR. McKEEN: I want the record to show that I object to

[ 74 ]

that testimony based on my previous objections.

THE COURT: Is that the only objection?

MR. McKEEN: The objection that the fruits of the poison tree stems from an illegal search taking place after the Defendant's rights were violated and that this is improper before this Jury.

THE COURT: Those objections are over ruled [*sic*].

MR. CRANE: That's all I have.

CROSS EXAMINATION

BY MR. McKEEN:

Q. Officer, you testified previously that your recollection in this case would be better served if you were allowed to use your notes, is that right?

A. Yes.

Q. And have you used those notes in your testimony?

A. Yes.

Q. And you have testified here as to what the Defendant said, the conversation back and forth and then when you talked to him and another Defendant within that same period of time or in that close period of time—you talked to two people involved in this crime, did you not, Patrick Lee and the Defendant?

A. Yes, I did.

Q. And you don't remember the idential [*sic*] words that the Defendant was suppose [*sic*] to say to you but the substance of what

[ 75 ]

was said?

A. In substance what he told me.

Q. And you don't remember this word for word, do you?

A. No, not word for word.

Q. And your testimony was such that it aided you in using your notes that you have before you?

A. Yes.

Q. I would like for you to point out to the Jury that portion of your notes that refreshes your recollection as to anything that the Defendants said reguarding [*sic*] needing money and having taken the bicycle because he had lost his job, would you point that out to the Jury?

A. I didn't write that down in my book when I contacted Mr. Hass.

Q. You didn't write any words down except that he admitted the theft of the bicycle?

A. Excuse me while I refresh my recollection from my notes.

Q. Again, for the record, you are checking your notes to determine the answer to that question, are you not?

A. What was your question?



Q. At the present time you are checking your notes, are you not?

A. Yes.

A. Okay, go ahead—

A. I do have in my notes after informing Mr. Hass of his

[ 76 ]

rights he admitted taking the two bicycles that day and he stated that a person was with him and he was in the house.

Q. Is that the extent of what your notes say as to what he said?

A. That's the extent of what I have in my notes, yes.

Q. Everything else that you have said is just the substance of what you believe was said, is that correct?

A. Yes, that's correct.

Q. During that same period of time you talked to two people involved in this case, did you not?

A. Yes, I talked to two people.

Q. And when you went up to the Defendant you told him that he was involved—not in those exact words but you were talking to him about the theft of the bicycle, were you not?

A. That's correct.

Q. And what was his response to the question about the theft of the bicycle, he admitted doing it, correct?

A. Yes.

Q. And he told you he did it himself, is that correct?

A. No, I don't believe he ever stated that he actually did it himself.

Q. Did you testify while the Jury was gone that he himself had stolen those bicycles?

[ 77 ]

A. If I can clear that point up, Mr. Hass never told me that he took any bicycles from any garage or any residence, he did admitt [*sic*] stealing the bicycles himself, yes.

Q. And he gave it to you as though he himself had committed the crime of stealing the bicycles?

A. Yes, at that time.

Q. He was telling you from his point of view, from his mind was that he not through someone else but that he had stolen the bicycles, is that correct?

A. Yes.

Q. Yet, from the investigation of this case you know that he's not the person that went into the garage and took the bicycle, do you not?

A. I only have an opinion there.

Q. Well, you investigated the case, didn't you, Officer?

A. Yes.

Q. And you talked to the Witnesses and learned that it was a person who took the bicycles with black hair?

A. Yes.

Q. And it was not this Defendant?

A. Yes.



Q. But your [*sic*] telling us now that when he gave you the statement he said that he had stolen the bicycles?

A. Yes, that's correct.

Q. And this statement was given the first time that you

[ 78 ]

contacted Mr. Hass?

A. Yes, that's correct.

Q. Didn't he tell you that two bicycles had been taken?

A. Yes, he did.

Q. Did he tell you that he took both of them?

A. In substance, yes.

Q. And yet from your investigation you know that as to taking them from the buildings that he couldn't have taken either one of these bicycles, do you not, Officer?

A. No, sir.

Q. Well, let's then refresh your memory again, the first bicycle that was taken—not the first but the first bike that you were investigating, the Witnesses saw a person with dark hair and not this Defendant, right, Officer, is that true?

A. Yes.

Q. Then through your investigation you learned that they found the car and there were only two people in the car, correct, when they found it?

A. I don't have it in my report as to how many people were in the car.

Q. When you were questioning the Defendant the questions that you asked and the responses that he gave involved only the stealing of the bicycles, is that true?

A. That's correct.

[ 79 ]

MR. McKEEN: That's all I have.

MR. CRANE: I have no further questions.

THE COURT: You may step down, Officer Osterholme.

* * * * *

[ 85 ]

WILLIAM ROBERT HASS

was thereupon produced as a Witness in behalf of the Defense, and having been first duly sworn on oath, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. McKEEN:

Q. Would you state your name, please?

A. William Robert Hass.

Q. What is your address?

A. 4500 Green Springs Drive.

Q. In Klamath Falls?

A. Yes.

Q. And for approximately how long a period of time have you lived there?

A. Oh, roughly a year and a half.

Q. What is your marital status?

A. Engaged.



Q. Have you ever been convicted of any crime?

A. No.

Q. How old are you?

A. Twenty two.

Q. Are you acquainted with Patrick Michael Lee?

A. I met him.

Q. Okay, do you know what the name of the other boy involved in this was?

[ 86 ]

A. Bill Walker.

Q. Bill Walker?

A. Yes.

Q. When did you know those persons?

A. When I was in school, five or six years, I seen them around, you know, I never talked to them then but I saw them just about a day before this happened.

Q. Okay, are they from a different area of the country?

A. Yes, Nevada.

Q. Now, you told the police that there was a hitch hiker [*sic*] and that he didn't have anything to do with this, you told the policeman that, is that correct?

A. Yes.

Q. Was that true?

A. No.

Q. Would you explain that?

A. Well, there was Bill Walker, Pat Lee and Bill Walker was the one that took the other bike.

Q. You lied to the police so that you wouldn't get your friends in trouble, is that correct?

A. Yes.

Q. Do you know now that that was wrong?

A. Yes.

Q. Now, referring you to the day of—the fourth day of August, 1972, being the date of the incident that your [*sic*]

[ 87 ]

charged with, do you recall that day?

A. Yes.

Q. And did you see those friends that you mentioned on that day?

A. Yes.

Q. And about what time did you first see them?

A. It would have been noon that day.

Q. And what did you do after you met these fellows?

A. We went to Idella's and got some beer and rode around drinking beer.

Q. What kind of beer?

A. Old English 800.

Q. Is that any different than regular beer?

A. Yes, it's compared to like about—about three times as powerful, it's malt liquor.

Q. Had you known in the mean time in these two



years since you had seen the fellows what they had been doing or anything of that nature?

A. No.

Q. Whose car did you have?

A. It was my car but Bill Walker was driving because I had my license—

Q. Just a minute, would you describe your car?

A. It was a 1958 Volkswagen panel and I cut off the top and I was going to put a camper on the back of it and all

[ 88 ]

it was pretty nice and I was going to wait until winter came around before I put anything back on it and I had a gold shag carpet around the windshield and the doors and everything.

Q. And this was visible from the outside of the vehicle?

A. Yes.

Q. Have you ever seen another vehicle—Volkswagen like that one?

A. No, never.

Q. That was the vehicle that you had on that day?

A. Yes.

Q. Now, you bought some beer at Idella's and when you came out who drove the car?

A. Bill Walker.

Q. Why was that?

A. I didn't have a license.

Q. Okay, you never had a license or had it been suspended or what?

A. I got in an accident a couple of years ago and I didn't have any insurance and it was suspended.

Q. And was that suspension in effect at that time?

A. Yes.

Q. Then, where were you sitting in the car while Bill Walker was driving?

A. On the passenger side right next to the door.

[ 89 ]

Q. And what did you do then after you guys got in the car and after you bought the beer?

A. Well, we stuck to the back streets, you know, just drinking beer and stuff so that just in case the highway patrol did come on—we were just cruising the back streets, you know, they're more apt to be on main street.

Q. Were you going any particular place?

A. No, just riding around.

Q. And did the people that you were with, were they from—familiar with Klamath Falls?

A. No.

Q. Why is that?

A. I guess because they had only been here for a day.

Q. So, tell us what happened then when you were cruising around?

A. Well, we were cruising around and then all of a sudden Bill Walker stopped and—



Q. At that point did you notice where you had gone or where you were going or particularly what you had been doing?

A. No.

Q. Had the people that you were with been talking about anything?

A. They were just mumbling something, I didn't know, I just wasn't paying any attention.

Q. And had this beer at this time that they stopped that you

[ 90 ]

had drank been enough beer so that you could tell that you had been drinking?

A. Well, I was pretty relaxed.

Q. Did you have any idea, any thoughts of anybody committing any crime when they were in that car?

A. No.

Q. Okay, what happened then when they stopped?

A. Well, Bill Walker got out and Pat Lee got out and they said to go down the street and then turn left, you know, just—

Q. At that time you must have known theydidn't [*sic*] live there, you know that?

A. Yeah, they didn't live there, no.

Q. Well, what went through your mind as to why they stopped there?

A. Well, they were arguing back and forth and I thought they were going to fight or something but I

really wasn't paying that much attention to what they were doing.

Q. Did it surprise you when they told you to stop the car and told you to go down the block?

A. Yeah, you know, like there [*sic*] from Nevada and then they stopped the car and then they get out and I don't know what's up.

Q. What did you do then?

A. I was just going about five miles an hour down the street

**[ 91 ]**

and then down there I turned the corner to the left and I kept on going and I was going real slow, about five miles an hour, maybe ten and then I came to the stop sign there and then maybe about thirty seconds all of a sudden Pat come up and toss [*sic*] the bike in and said "get the hell out of here," and he ducked down on the floor.

Q. Who is Pat?

A. Patrick Lee.

Q. And at that time you knew that the bicycle was stolen, didn't you?

A. Yeah, I figured that.

Q. Okay, up to that point did you have any idea what Pat Lee or that other fellow was going to do?

A. No.

Q. Where was this other fellow when Pat Lee threw the bicycle into the Volkswagen?



A. I don't know.

Q. He wasn't there?

A. No.

Q. Then, what did you do when he said "get the hell out of here"?

A. I kept on going straight, I didn't know what to do.

Q. When you came to the stop sign did you stop?

A. Yeah, I think there was—well, the first time that I stopped is where he tossed it in the back, he threw it in the

**[ 92 ]**

back and he got in the car and he said "get the hell out of here," and I was just going down the street and I kept on going straight until I came to that main street, there was a stop sign there and I waited for the traffic to clear and then I kept on going straight.

Q. Why did you go with him when you knew that he had stolen a bicycle?

A. I didn't know that he stole it at first but then he said to get the hell out of there and then we come to this dead end—

Q. You knew that you were stealing a bicycle the same as he was, didn't you?

A. Well, the bicycle was in the back of my car and I knew that I could get into as much trouble as he could and so we came to this dead end I turned into [*sic*] toss this bicycle out, there is this little—there is a railroad

track there and a fence and when we came to the dead end in this field we were going to take the bicycle out and throw it out and we had just come to a stop and here come this Jeep winging around the corner.

Q. Do you mean at that point it was your intention to get rid of the bicycle and get it out of your car?

A. Yeah.

Q. Was it ever your intention of selling it or getting money for it or anything like that?

[ 93 ]

A. It was my intention to get rid of it as soon as possible.

Q. Now, who the bought the beer that you had previously?

A. I did.

Q. Did the other boys have any money?

A. No.

Q. Did you have any money?

A. I had around five or six dollars.

Q. Then, you went to throw the bicycle out and these people came and then what happened?

A. Well, we just come to a stop and then this Jeep came winging up around the corner and he turned down the street and cut us off and Mr. Lehman, he says "have you seen a guy ridding [*sic*] a bicycle," and Mr. Lehman's son goes "that's the guy, that's him."

Q. Pointing to who?



A. Pat Lee and then Pat got out of the car and there was a sleeping bag over it, all spread out and Pat was trying to make up something that it was George's bike and that George said that he could use it or something along that line.

Q. Did you say anything?

A. No, they didn't even look at me, I didn't turn around.

Q. Did you look at them?

A. Yeah, I saw them and I saw it when Mr. Lehman's son said "that's him there," and the next thing I knew Pat was out

[ 94 ]

of the car and handing Mr. Lehman the bike and making some excuse.

Q. Were you scared at that point?

A. I was scared the first time when that bike came flying in the back of my car.

Q. How did it get covered up with the sleeping bag?

A. Well, Pat got it [*sic*] the back after he threw the bike in the back of the car on the floor and then when we got up to the second stop sign if I recall right, that busy street, Sixth Street or Main Street then he covered it up with the sleeping bag and then we just kept on going and then we came to this field where we were going to get rid of it.

Q. Did you tell him that you wanted to get rid of the bike, that you didn't want to get caught with it?

A. Yeah.

Q. Do you remember whether he said anything about that or not?

A. He said something about that we could get out of here, you know, get rid of the bike and stuff like that.

Q. Where was this other boy that had been with you at that time?

A. Well, after we got pulled over and gave the bike back and then Pat goes down this street here—

Q. Just a minute, did you know where this other fellow was?

A. No, I didn't know where he was.

[ 95 ]

Q. Had you seen any other bike other than this one?

A. No.

Q. Then, after they got their bike, then what happened?

A. Then Pat goes—said go straight down there to this busy street and there was Bill Walker sitting down there and he had this other bicycle by him and so then we pull up and he takes the bike and throws it in the back and I said "what are you doing," and he said "got another bike," and I said "no, we're not," and I turned around and I took it out by Washburn Way and I threw it as far as I could.

Q. Did you throw it away so that—did you take care of the bike so that you could come back and pick it up later or what?

A. I wasn't worried about hurting the bicycle, I was more worried about getting caught.



Q. This Walker, why was it that you didn't leave him there instead of letting him take advantage of you further?

A. Well, I sort of knew the people half way.

Q. You knew that he was from Nevada at that time?

A. Yes.

Q. You did know that what you were doing then was wrong, did you not?

A. Yes.

Q. And did you know that that was a stolen bicycle?

A. Yes.

[ 96 ]

Q. Later you told the police that you had stolen two bicycles, didn't you?

A. Yes.

Q. Did you go into anybody's garage at any time during this?

A. No.

Q. Or anybody's house?

A. No.

Q. Did you have any knowledge as to any discussions that would cause you to believe that somebody was going to burglarize a house in broad daylight with your car out front on the day that this occurred?

A. No.

Q. Then, did you have any knowledge of your as to where the bicycles came from?

A. I figured they came out of the area—you know, where I dropped Pat and Bill off.

Q. Now, were you arrested for this charge?

A. Yes.

Q. And were you placed in jail with any of the persons that were involved with you?

A. Yes, Pat Lee.

Q. Did you ever learn through Pat Lee what the reason was why they had done this?

A. Yeah, they were going to get some money—going to sell the bikes to get some money to get up to a job in Lake Tahoe,

[ 97 ]

a construction job or something.

Q. That is down where they live?

A. Yes.

Q. Did you have any intention of going down there?

A. No, I live up here.

Q. You had lived up here for a couple of years, had you not?

A. Almost a couple of years.

Q. When the officer came out to talk to you, would you tell us what was said and what happened?

A. Well, he came up to the door and he asked for Bill Hass and I told him that was me and we went to the car and he gave me my rights and everything and then asked where was the bike and I told him that I took



two bikes and that the people got one back and then the other one was out in the weeds.

Q. Why did you tell him that you took two bikes?

A. Well, it was my car that hauled them off.

Q. Okay, did you mention anything—did he mention anything to you about who went in the garage or who went in the house or anything like that?

A. He said something like the bike that you took from such and such garage or something like that.

Q. Then what happened when you went into the house?

A. Well, he asked me if he could step in there, there was sort of a small porch and he asked me if he could come in

[ 98 ]

and I didn't say anything, close [*sic*] the door and the next thing I knew the door flies open and he said to get outside—

Q. To you?

A. To Pat.

Q. What words did he use to Pat?

A. He said "you creature feature, get your ass outside."

Q. Did you tell him anything as to who was in the house or anything like that?

A. I told him about where my friend was with the dark hair that he was inside.

Q. So, at that time you had a chance to tell him about the other guy and you didn't do so?

A. Pardon me?

Q. At that time you didn't tell the police officer about this other fellow, about Bill Walker?

A. Yeah.

Q. At that time when you talked to the police officer did you ever tell him that you needed money and that's the reason you took the bicycle?

A. No.

Q. Do you have any idea where he got those words or why he said that under oath?

A. From Pat.

Q. At that time that the police officer talked to you, did

[ 99 ]

you know that stealing a bicycle and burglary in a building were two separate things?

A. I'm not familiar with the laws or anything, you know, if you take something from like a store, I don't know, stealing is wrong.

Q. You knew that stealing was wrong, is that right?

A. Yes.

Q. You felt that when you put the bicycle in your car that was stealing?

A. Yeah.

Q. Did you ever deny to the police officer other than what you have told us, did you ever deny to the police



officer that you had been the one that had stolen those bicycles?

A. No, I included myself in like the bank robber who gets—in the get away car I guess, I had no idea they were going to take the bikes but the first thing that I knew Pat comes up and throws the bike in the back of my car and an accomplice is just as bad.

MR. McKEEN: That's all I have.

CROSS EXAMINATION

BY MR. CRANE:

Q. When you talked to the officer, Officer Osterholme, were you employed at that time?

A. No.

Q. Had you been employed at Weyerhaeuser?

[ 100 ]

A. Yes.

Q. How long had it been since you've worked?

A. July 20.

Q. Did you have any money owing from them to you at that time?

A. Yes, I had picked up around a sixty dollar check down in Carson, I had picked the check up and that was from Weyerhaeuser.

Q. When was that?

A. The day before.

Q. Okay, this place where you were living, who's [*sic*] address was that?

A. It was mine.

Q. Were you renting it?

A. Yes, I am renting it.

Q. Now, at the time, how long do you think you were driving around before this incident happened?

A. Oh, I would say two or three hours, I wasn't keeping track of time.

Q. How much beer did you buy?

A. Just a six pack.

Q. And how many of those out of the six pack did you have?

A. Well, we each got two and there were—they were half quart cans and that equals about three quarts of any other kind of beer, this was Colt 45 malt liquor.

Q. So, you drank two half quart cans in the course of two

**[ 101 ]**

or three hours, is that correct?

A. I had—within forty five minutes from the time that it was bought.

Q. You had driven around for a period of time before you bought the beer?

A. No—Well, we went to Idella's and we bought the beer and we drank the beer, in about—oh, an hour and a half we drank the beer and then the first thing I knew the car stopped and they got out and that's when it started.

Q. Okay, during the course of this hour subsequent



to the time that you were drinking the beer, what area were you driving and where were you driving?

A. Well, we were driving around all over, over here by the K.O.A. Camp Grounds and things like that.

Q. By K.O.A.?

A. Yeah, and driving mostly on the back streets and then for about the last maybe ten or fifteen—ten or twenty minutes mostly up in that area up there.

Q. In Moyina Heights?

A. Yeah.

Q. Why were you driving the back streets?

A. Well, the police travel mostly the main streets, you know.

Q. But you had completed your drinking about an hour before that, why were you still driving around the back streets?

A. Well, there were empty cans of beer in the car and everything.

**[ 102 ]**

Q. You were just driving around with empty cans and you were staying on the back streets, is that your testimony?

A. Well, I really don't know, I wasn't driving, I was just riding and enjoying the scenery.

Q. Now, you testified that the other two parties were mumbling among themselves, you don't know anything that they were saying, is that right?

A. Well, I know that they said something, this was like a convertible and it was pretty windey [*sic*].

Q. All three of you were in the front seat?

A. Yes, there was no rear seat or nothing.

Q. And this Volkswagen bus has an engine in the rear, is that correct?

A. Yes.

Q. Were you traveling at a high rate of speed in that area?

A. No.

Q. Were you going fairly slow down the road?

A. Twenty or thirty miles an hour.

Q. And you were driving in the Moyina Heights area for ten to twenty minutes, is that what you said?

A. Yes.

Q. And you heard Mr. Lehman testify that you went past his house about three times, do you think that is correct?

A. It's possible, I wasn't watching, I was pretty relaxed.

Q. You weren't watching?

**[ 103 ]**

A. No.

Q. And you weren't listening to what they were saying?

A. No.

Q. What were you doing?

A. Just watching the scenery.

Q. Okay, you were watching the scenery, are you



telling me that you were watching the scenery and you had no idea where you were?

A. I knew where I was.

Q. You had no idea when you were traveling down that street about three times when you were watching the scenery—it didn't look repetitious to you maybe that you had seen that house before?

A. Well, if you travel a street three times you only travel—you only see the one side one time, your [*sic*] watching this side and when you come back your [*sic*] watching this side.

Q. Your [*sic*] saying that you went up and back on this street?

A. It's possible.

Q. Did you or didn't you?

A. I really wasn't aware of it.

Q. You just weren't aware that you were on that street—

A. I was aware that I was on a street.

Q. Do you recall going up that street and turning around and coming back?

A. If you went up it three times you would go up this way

**[ 104 ]**

and you were watching this side and then when you come back your [*sic*] watching this side, I was sitting on the passenger side and one side doesn't look like the other side.

Q. You went up and down that street three times and you knew it?

A. I wasn't counting.

Q. Okay, you knew that you were going up and down that street a number of times?

A. Well, it looked—

Q. Come on now, is that right or wrong?

MR. McKEEN: I would ask that the Witness be allowed to answer.

MR. CRANE: I agree, your Honor.

THE COURT: Proceed.

MR. CRANE: Q. You were aware that you were going up and down that street?

A. I was aware that I went up that street.

Q. And you were aware that you were going up that street a number of times, more than once?

A. Yes, sir.

Q. Now, you weren't paying any attention because you were watching the houses, is that right?

A. Well, that's a pretty nice area up there.

Q. I agree—

A. I was watching as we would go down one side of the street

**[ 105 ]**

and then I would watch this side and then we came back and it looked familiar and then we turned and they stopped.



Q. Okay, what about the other street, what about Cherry Way, do you remember going up that street?

A. I don't remember going up—I don't even remember what streets.

Q. How many times did you go up and down Cherry Way?

A. I couldn't tell you. I would say none but I would say that they went down once and went half way and then they stopped and then got out and I drove.

Q. That was on Cherry Way that they stopped?

A. I wouldn't know if it was Cherry Way from Carlson Way.

Q. You went by two houses that had bicycles near them, are you telling us that you didn't hear anyone mention the word bicycles at all when you were cruising around in that crowded area, they never mentioned stealing bicycles to your knowledge?

A. No, sir.

Q. Not one word was said?

A. I didn't hear anything about stealing bicycles.

Q. What were they arguing about?

A. Oh, they were getting on each others [*sic*] nerves and stuff like that.

Q. About what?

**[ 106 ]**

A. I have no idea.

Q. Were they arguing in loud voices?

A. Once in a while they would get a little loud.

Q. What were they saying?

A. I wasn't paying any attention.

Q. Alright, they stopped, did they appear like they were going to get out and fight, were they mad at each other?

A. Well, during the day they were yelling at each other.

Q. I mean at the time they stopped the bus and one of them said to you to drive down the street, I'm asking you when they got out of the bus did they appear like they were going to fight to you?

A. No, sir.

Q. You didn't really think they were going to fight?

A. Well, I couldn't say what they were thinking.

Q. I'm asking you what it looked like to you, you didn't think they were going to fight really, did you?

A. Well, I couldn't say what they were going to do.

Q. I'm asking you seriously, you told us earlier that they were arguing and you thought they were probably going to get out and fight, did they look like when they got out of the car, did they look like they were going to fight, did you believe in your own mind at that point that they were going to fight?

A. I couldn't say, I had no idea what they were going to do,

[ 107 ]

I couldn't tell you what one person was thinking.



Q. Now, you hadn't driven the car because of the fact that your license was suspended?

A. Yes.

Q. And two men get out of your car and tell you—they don' t tell you a thing as to what they're going to do but they tell you to drive down around the corner and park and so you do that?

A. Yes.

Q. What did they say?

A. Drive down around the corner and turn left and just keep on going.

Q. Just keep on going?

A. Uh huh.

Q. And so you get behind the wheel and you drive down and you turn left and you just keep on going just like they told you to do?

A. Yeah.

Q. You had no idea what they were going to do?

A. No, I was feeling pretty good, you know, I really didn't care what they were going to do but then later on I found out.

MR. CRANE: No further questions.

REDIRECT EXAMINATION

BY MR. McKEEN:

[ 108 ]

Q. When they said drive down, did they wait for your answer or were they on their way someplace?

A. They got out of the car and they started walking and so I drove down around the corner and then turned left and kept on going.

Q. At that point, do you recall what was going through your mind when these guys got out of the car, do you recall what was going on in your mind?

A. I really couldn't say what was going on, I couldn't judge as to somebody else.

Q. Your not saying that during this entire time that you were there that they didn't talk to you or you didn't talk to them once in a while about things?

MR. CRANE: I would object to this as a leading question.

THE COURT: Sustained.

MR. McKEEN: Q. Did you talk back and forth during this time?

A. Oh, yeah, you know, once in a while they would talk between themselves but like it was hard to talk to the driver when I'm way over here, I talked to Pat.

Q. Did you have any reason to believe that they were going to use your car to do anything like this?

A. I had no idea.

Q. Mr. Crane kept asking you over and over again and going up and down the streets, other than what has been described

**[ 109 ]**

in Court as the streets, did you know at that time which particular streets you were on when you were on them at that time?



A. Which streets are you talking about now?

Q. Well, on any of the streets in Moyina Heights?

A. I'm not really familiar with them in Moyina Heights.

MR. McKEEN: That's all I have.

RECROSS EXAMINATION

BY MR. CRANE:

Q. Did you see other [*sic*] of the bicycles being taken from either of the residences?

A. No.

Q. Do you know where those residences were located?

A. No.

MR. CRANE: Nothing further.

MR. McKEEN: I have no further questions.

THE COURT: You may step down.

MR. McKEEN: That would conclude the Defendant's case and I would like to renew my motions that I have made previously with the same arguments.

THE COURT: Rebuttal?

MR. CRANE: I would need the Court's ruling as to whether or not I would have any rebuttal evidence.

THE COURT: The Jury may retire to the Jury room. You'll have at least ten minutes. Donot [*sic*] discuss this case.

**[ 110 ]**

(Out of the presence of the Jury)

THE COURT: Proceed.

MR. CRANE: Your Honor, on the State's case in chief the State was not allowed to introduce evidence by Officer Osterholme that the Defendant had taken him to two residences where the bicycles were taken from and we would propose in our rebuttal case in view of the Defendant's testimony in Defendant's case that he didn't have knowledge of the two homes, we would propose to introduce evidence to the effect that he did take Officer Osterholme to these residences and I would site [*sic*] to the Court Volume 8 of the Criminal Law Reporter at page 3139 [*i.e., Harris v. New York*, 404 U.S. 222 (1971)].

THE COURT: We'll recess now for about fifteen minutes until I can look at some cases.

(Whereupon a fifteen minute recess was taken)

THE COURT: The objection to the proposed rebuttal is over ruled [*sic*] but the Court is going to give the Jury the usual instruction that they can receive that evidence not as evidence—substitutive [*sic*] evidence but only bearing on the credibility of the Defendant as a witness. Are you ready to call your Witness?

MR. CRANE: Yes.

THE COURT: Bring in the Jury.

(In the presence of the Jury)

THE COURT: Proceed.

**[ 111 ]**

MR. CRANE: The State would recall Officer Osterholme.

(Officer Osterholme having been previously sworn resumed the witness stand)



DIRECT EXAMINATION

BY MR. CRANE:

Q. Officer Osterholme, you testified earlier in this case, is that correct?

A. Yes.

Q. You are still under oath, you realize that?

A. Yes.

Q. Officer, subsequent to the questioning of Mr. Hass and the questioning of Mr. Lee, did you take them into Moyina Heights area?

A. Yes.

Q. And did you have them point out homes where the bicycles were taken from?

THE COURT: Just a moment—

MR. CRANE: Excuse me, Your Honor.

THE COURT: Proceed:

MR. CRANE: Q. Were the houses pointed out to you?

A. Yes.

Q. Who did that?

A. Mr. Hass.

Q. Did he point out both houses where the bicycles had been taken from?

**[ 112 ]**

A. Yes.

MR. CRANE: That's all the questions that I have.

CROSS EXAMINATION

BY MR. McKEEN:

Q. Mr. Lee was with him at that time?

A. Yes, he was.

Q. And when you first talked to Mr. Hass did he tell you that he knew the area that they were in but didn't know any specific number or that he couldn't tell you by identification at that time the specific house?

A. No, he stated to me that he knew where the bicycles came from, however, he didn't know the exact street address.

Q. He told you that he would have to go out and show you?

A. Yes.

Q. And when you went out you had the person that had been with him, along with him, is that correct?

A. Yes, that's correct.

Q. Just so that we don't leave anything out as to what happened, had Mr. Hass asked you before you took out there to see an attorney and you refused to allow him to see an attorney?

A. He did ask me if he could see an attorney, however, I didn't refuse him.

Q. You told him he could see one when you got back to the station, is that correct?



A. No, sir.



Q. What did you tell him?

A. I told him that we would make a phone available at the patrol office and he then agreed to go ahead and continue the investigation with me.

Q. So, after you told him—after he told you that he wanted an attorney did he tell you that he was in trouble and wanted an attorney?

A. Yes, that was before.

Q. Then after he told you that he was in trouble and wanted an attorney did you have him show you where the bicycle was out in the field?

A. Yes.

Q. Then did you have him take you down to the area so that the boys could point out the house for you so that you could finish your investigation?

A. Yes.

Q. Then during any of that, did you let him see an attorney?

A. No.

Q. Why not?

A. He didn't request it.

Q. I thought you said that he did, why didn't you?

A. He didn't request to see any attorney at that time.

Q. Well, let's start over again, my question was did he mention an attorney to you before this happened?



A. Yes, he did.

Q. And tell us what he said?

A. He mentioned the words to the effect that he thought he was in a whole lot of trouble and wondered if he could talk to his attorney.

Q. Are you saying that he didn't ask you for an attorney?

A. Yes.

Q. Do you have any interest in this case, Officer, in the out come [*sic*] of this case?

A. Yes.

Q. Why is it that you didn't let this boy have an attorney before you had him—after he told you that he wanted one before you had him do these things?

A. What is your question, Mr. McKeen?

MR. McKEEN: Would the Reporter read back the question.

(Whereupon the last question was read to the Witness)

THE WITNESS: Mr. Hass if he would have insisted on having an attorney he would have been able to have one, he was not forced in anyway [*sic*] to do anything.

MR. McKEEN: Q. Let's go back now to that statement that you read to the Jury, would you pull that out again, the statement of Mr. Hass when you first talked to him?

A. Yes.

MR. McKEEN: I would ask that this be admitted into evidence.



**[ 115 ]**

MR. CRANE: No objection.

(Defendant's exhibit 'A' marked for identification)

THE COURT: Exhibit 'A' is received.

MR. McKEEN: Q. Now, Officer, did you have the Defendant sign this or anything?

A. No, I didn't.

Q. You signed it yourself and then you wrote his name in there, is that correct?

A. Yes.

Q. And you misspelled his last name?

A. Yes, I did.

Q. And you put down here that this was a burglary, did you not?

A. Yes.

Q. Why was it then when you first talked to him you said that he was accused of stealing two bicycles?

A. I didn't say that he was accused, that we were investigating the theft of two bicycles.

Q. And actually you were investigating a burglary, weren't you?

A. Yes.

Q. Why didn't you tell him that you were investigating a crimethat [*sic*] is similiar to murder instead of one that is similar to drunken drivng—

MR. CRANE: I would object—

**[ 116 ]**

THE COURT: Sustaned.

MR. McKEEN: Q. Didn't you tell him that you were investigating a burglary case before you got these statements from him?

A. I wasn't sure of the burglary case, I wanted to make sure.

Q. And you wrote here "Burglary One, two charges"?

A. Yes.

Q. Did you know at that time the bicycles had to have been taken out of the garage?

A. No, sir.

Q. And then you wrote "Burglary one"?

A. Are you referring to what is written on the bottom line?

Q. Yes.

A. That's filled in later.

Q. Now, just tell us exactly what is filled in later?

A. Would you like me to show the Jury?

Q. Show the Jury?

A. Everything pertaining to his rights is filled in at the time, the exact time that the form is written and I also write his name in here and the reason for the misspelled word—name is because that's the way Mr. Hass told me to spell his name and he later gave me a different spelling on it and then burglary one and two charges is written down at the conclusion that night.



Q. Now, your [*sic*] telling this Jury under oath that at the time

**[ 117 ]**

you wrote his name that he misspelled his name and it was later that you wrote burglary one, two charges?

A. Yes.

Q. It's your testimony that everything down to the word "case" clear to the bottom was written when you talked to the Defendant and the rest was written later, is that true?

A. Where it says arrest.

Q. The arrest was written in later?

A. The only thing written in later was burglary one, two charges.

Q. And it's your testimony that it was his mistake in spelling and not your error, is that true?

A. Yes.

Q. And you maintain that as you maintain other parts of your testimony under oath?

A. Yes.

Q. For instance, did you contact the Department of Motor Vehicles, Klamath Falls City Police to learn the name of the Defendant—

A. I did contact them, however, I didn't learn his name.

Q. What does this mean "8:30 p.m., writer contacted the City Police Department and obtained the name of William Robert Hass—"

A. That was from an accident report and I'm not sure if they gave the actual spelling.

[ 118 ]

Q. It's still your name [*sic*] that this boy gave you a phoney name?

A. Yes, sir.

Q. And then in your notebook you got his name as 'Haas', date of birth 5-24-50, do you have any reason to believe that that isn't his date of birth?

A. I would like to see my notebook to refresh my memory?

Q. Well, assuming that to be true—

MR. CRANE: I think he is entitled to see his notes.

MR. McKEEN: I'll withdraw the question.

THE COURT: Proceed.

MR. McKEEN: Q. Assume that to be true that you have placed the date of 5-24-50 in the notebook as the date of birth, do you have any reason to believe that that date would be untrue or uncorrect [*sic*]?

A. No, sir.

Q. You have also placed the Social Security number as 530386641, do you have any reason to believe that that would be incorrect?

A. No, sir.

Q. Where did you get those numbers and dates?

A. It depends on what time you have there, I believe I obtained that from Mr. Hass at the jail at the time



that I questioned him about the different spelling of his name.

Q. I'll ask you to look at the notebook and try to tell us if that took place at the jail?

[ 119 ]

A. This is when I contacted Mr. Hass.

Q. Okay, you got his name from the Department of Motor Vehicles and you came out to a Mr. Hass and he gave you his birth date and his Social Security number and then according to your testimony he spelled his own name, is that correct and you want this Jury to believe that?

A. Yes.

Q. You want this Jury to believe that you obtained that from the Klamath Falls City Police Department that a person was the owner of this vehicle and that you went to his house and you talked to him and that the vehicle was there and that he gave you his birth date and his Social Security number and then gave you a phoney spelling of his name, is that what you want this Jury to believe?

A. I believe I explained my answer, it might aid me if I had my notebook. First of all Mr. Hass's vehicle was registered to Edward C. Pachino Junior of 3429 Summers Lane in Klamath Falls, Oregon and at 7:50 I contacted this address and found out that Mr. Pachino had moved and at 7:57 I contacted—through my investigation that Mr. Pachino had sold his car to William Hass and the vehicle was not registered to Mr. Hass.

Q. Show me in what part of your notes your [*sic*] using to refresh your recollection?

A. Certainly, here's where it is, registered to Edward C.

[ 120 ]

Pachino Junior, 7:50, 3429 Summers Lane and this is where I contacted this party and was advised the following—

Q. Kindley [*sic*] tell us how you spelled that name?

A. Hass.

Q. Now, was this notebook written step by step or something where you went back—

A. Step by step.

Q. So, you had the boys [*sic*] name prior to going out to the house and talking to him, didn't you?

A. I had a different version of his name, yes.

Q. Prior to going out to the house and talking to him, what was the different version of his name?

A. To the spelling of the last name, the person I just referred to in the notebook only knew his last name as Bill Hass, Hass.

Q. And what was the other name that you knew him as?

A. The other spelling was Haas.

Q. And from whom did you obtain that?

A. Could I see my notebook?

Q. The question was before you went out to talk to Bill Hass?



A. Yes.

Q. Did you have two spellings of the name then?

A. Yes.

Q. From whom did you obtain the first spelling, Haas?

A. I believe that was from the Klamath Falls City Police

[ 121 ]

Department.

Q. Okay, so, the Defendant here spelled the name wrong and you just happened to spell it the same way wrong that the Klamath Falls City Police had spelled it wrong prior to talking to him?

A. Yes.

Q. Did he in fact hand you this when you asked for his identification?

A. I don't recognize it.

Q. Have you looked at it enough to know whether you actually recognize it or not?

A. Yes, it has his name on it, it's a draft card.

Q. Did he hand you this piece of paper when you were out at the house when he gave you his Social Security number?

A. I don't remember.

Q. Now, I'm going to read this and ask you if you told the Defendant these words "if you cannot afford to hire an attorney one will be appointed to represent you before any questioning if you wish one, do you understand that," his answer "yes," "if you give a statement

you can stop talking at anytime you wish, do you understand that," and he said "yes," "having these rights in mind, do you wish to talk to us now," and his answer was "yes," were these questions asked him?

A. Yes.

**[ 122 ]**

Q. Did you tell him that at anytime [*sic*] he wished he could stop and have his attorney present during any statement?

A. Not in those exact words, only what's on the advice of rights card.

Q. Then, after he told you he was in bad trouble and wanted an attorney you went ahead and got everything that you could before you let him talk to an attorney?

A. No, sir.

MR. McKEEN: I would ask that the report of the arrest of the Oregon State Police signed by this Witness be admitted into evidence as pertains to the spelling of the name, the writing on the back I would agree that either could be left there or stricken.

Q. Did the Defendant come across and tell you his real name was Hass?

A. I believe we got it straightened out down at the jail.

Q. Was it then that you charged him under the name of Haas?

A. Did I charge him under that name?



MR. McKEEN: I would ask the Court to take judicial knowledge of the fact that the Defendant's name is spelled wrong.

THE COURT: The Court will take judicial notice that the Defendant's name in the indictment is spelled Haas if that would assist you.

MR. McKEEN: Q. Why did you charge him with that name after

**[ 123 ]**

you had gotten it straightened out?

A. I don't recall.

MR. McKEEN: Could I have this marked?

(Defendant's exhibit 'B' marked for identification)

MR. CRANE: No objection.

THE COURT: Your [*sic*] offering exhibit 'B'?

MR. McKEEN: Yes.

THE COURT: Exhibit 'B' is received.

MR. McKEEN: Q. Didn't you put in your report that Patrick Lee and William Hass were the ones that identified the residence?

A. Yes.

Q. Since there was both of them there why did you just testify that it was this Defendant?

A. Mr. Hass positively identified the residence and then Mr. Lee after looking them over then he would identify them.

Q. He's the one that just said "yeah," but this boy is the one that pointed them out to you?

A. I don't recall that.

Q. Anyway, your report was written closer to the time, that time, was it not?

A. Yes.

Q. At that time you wrote that Patrick Lee and William Haas, Haas had identified these residences from which they had stolen the bicycles? Now, it was William Hass, correct?

**[ 124 ]**

A. What's your question?

MR. McKEEN: That's all I have.

REDIRECT EXAMINATION

BY MR. CRANE:

Q. Who identified the residence first?

A. Mr. Hass.

Q. And then what was Mr. Lee's part in that?

A. He identified them, you know, he had some difficulty until Mr. Hass actually pointed them and then once he got to looking at them then he recognized it and knew the area.

MR. CRANE: That's all I have.

RECROSS EXAMINATION

BY MR. McKEEN:

Q. You didn't see any importance in putting that down in your report?

A. No, sir.



MR. McKEEN: That's all I have.

THE COURT: You may step down, Officer.

MR. CRANE: The State would rest it's [*sic*] rebuttal.

THE COURT: Is the Defendant seeking to have the instructions to the Jury on the use of this?

MR. McKEEN: Yes, I would like the Jury instructed that this statement was admitted only for the use of impeachment purposes.

THE COURT: Members of the Jury, the portion of Officer

**[ 125 ]**

Osterholme's testimony describing the statement made by the Defendant Hass to him during this last time that the Officer was on the stand may not be used by you as proof of the Defendant's guilt, in other words, as substitutive [*sic*] evidence of the crime but you may consider that testimony only as it bears on the crediability [*sic*] of the Defendant as a witness when he testified on the witness stand. Anything further?

MR. McKEEN: I do have one short matter that I would like to take up with the Court out of the presence of the Jury as to further instruction on this point.

THE COURT: Do you mean that the Court rule that it was inadmissible as direct evidence?

MR. McKEEN: Yes.

THE COURT: Members of the Jury, there was a hearing out of your presence in which the Court ruled

that the statement of the Defendant to Officer Osterholme when they were going up to Moyina area—to the Moyina area for the purpose of locating the residences were [*sic*] inadmissible as direct evidence and the Court excludes them under the appropriate rule.

MR. CRANE: I didn't understand that, Your Honor?

THE COURT: The rule is that you may not use that testimony as substitutive [*sic*] evidence of guilt but it is admissible as it bears on the credibility of the Defendant as a Witness

**[ 126 ]**

when he testified on the witness stand.

MR. McKEEN: I do have one witness on sir rebuttal [*sic*].

THE COURT: Proceed.

MR. McKEEN: I would recall the Defendant.

(William Robert Hass having previously been sworn resumed the witness stand)

DIRECT EXAMINATION

BY MR. McKEEN:

Q. Did you give the Officer a misspelled name for any reason during this incident?

A. Never.

Q. You heard him testify that you did?

A. When he gave me my rights he asked me for identification and I gave him my draft card.

Q. And is your name spelled correctly on it?

A. Yes.



Q. And did you give your right Social Security number?

A. Yes.

Q. And your birthday?

A. Yes, May 24, 1950.

Q. The Officer said that he took you out to these places and you pointed out the houses, is that correct?

A. That's wrong.

Q. What happened out there?

A. He just took me up to the place and I was handcuffed and

**[ 127 ]**

they took us up to the door and they had us identified and they didn't identify me, they said Pat Lee was the guy.

Q. Okay, he took you up to the door and they identified Pat Lee and you were there too, is that correct?

A. Yes.

Q. Did the Officer make any attempt at all to have you show what house it was?

A. No.

Q. Did he make any attempt to have Pat Lee show what house it was?

A. No.

MR. McKEEN: That's all I have.

CROSS EXAMINATION

BY MR. CRANE:

Q. When you got back in the car where did you go?

A. With the Officer?

Q. After Mr. Lehman identified Lee?

A. Went around the corner and there was a house there that he took us to.

Q. He just pulled up to the house?

A. Uh huh.

Q. And did Lee tell him where it was?

A. No.

Q. Did you know?

**[ 128 ]**

A. No.

MR. CRANE: That's all I have.

MR. McKEEN: No further questions.

THE COURT: You may step down.

* * * * *



**OPINION OF OREGON COURT OF APPEALS**

[Opinion set forth in full as Appendix C, pages 20-25 of the printed petition for a writ of certiorari.]

## OPINION OF OREGON SUPREME COURT

[Opinion set forth in full as Appendix A, pages 12-18 of the printed petition for a writ of certiorari.]



## JUDGMENT OF OREGON SUPREME COURT

[Judgment set forth in full as Appendix B, page 19 of the printed petition for a writ of certiorari.]